APIL briefing: Part two of the Overseas Operations (Service Personnel and Veterans) Bill – House of Commons Second Reading – September 2020

Loss of legal rights

Everyone who is injured as a result of someone else's negligence has a fundamental right to make a legal claim for redress. Part two of the Overseas Operations (Service Personnel and Veterans) Bill will strip some injured service personnel and veterans of that right.

Currently there is a three-year limitation period for someone to make a personal injury claim, and a one-year limitation period for a claim to be brought under the Human Rights Act 1998 (such as for a breach of the right to life). The limitation period in personal injury claims starts from the date of the incident, or the date of knowledge of the injury or disease. The limitation period for claims brought under the Human Rights Act starts on the day of the incident to which the claim relates. A court can, in certain exceptional circumstances, allow a case to proceed after the end of the limitation period in both types of claim. There may be many reasons why claims are not brought within the three-year period, but a court is already duty-bound to weigh the balance or prejudice, to both sides, before extending the normal three-year period.

If part two of the Bill becomes law, service personnel and veterans injured through negligence during overseas operations will no longer have the benefit of the full discretion of the court to allow a claim to proceed after the limitation period has expired. Instead, those who have served overseas, potentially risking their lives in service of their country, will be shackled with an arbitrary absolute six-year time limit in which to pursue either a personal injury claim or a claim under the Human Rights Act.

Lack of evidence and explanation

The only apparent rationale for these proposals is that personal injury claims against the MoD are brought late, and the restriction "would be beneficial to Armed Forces personnel and veterans"[1]. This is an extraordinary claim by the Government, which has provided no real evidence or examples of how personnel and veterans will benefit, or how many claims have been brought late. In the consultation paper last year, which preceded the Bill, the Government made the claim that "the proposal is not intended to avoid the Government being held accountable for injuries or deaths occurring outside the UK"[2]. In fact, it is difficult to see any other purpose for this Bill.

The Bill also represents a complete reversal from the original intention of the Government in relation to the Human Rights Act. In the consultation, the Government said that "in line with our commitments to continue to safeguard human rights, we are not proposing to restrict the Court's discretion to extend the time limits for bringing claims relating to human rights violations"[3]. Clause 11 of this Bill, however, does exactly that, with no explanation for this reversal.

The Government eventually published a response to its consultation less than a week before the second reading debate, and six months after the Bill had been introduced into the House of Commons. Many of our concerns about the lack of evidence and explanation still remain unaddressed. One issue which the Government has attempted to address is the decision to set the absolute time limit at six years. The Government refers to the "UK's absolute six-year limitation period for intentional torts", and the case of Stubbings and others v United Kingdom[4]. This is a spurious comparison.

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[1] Explanatory notes, page 5, paragraph 11 https://publications.parliament.uk/pa/bills/cbill/58-01/0117/en/20117en.pdf

[2] Legal Protections for Armed Forces Personnel and Veterans serving in operations outside the United Kingdom, page 18 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819101/20190718-MOD_consultation_document-FINAL.pdf

[3] Legal Protections for Armed Forces Personnel and Veterans serving in operations outside the United Kingdom, page 18 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819101/20190718-MOD_consultation_document-FINAL.pdf

[4] MoD Analysis and Response, Public consultation on Legal Protections for Armed Forces Personnel and Veterans serving in operations outside the United Kingdom, page 23, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918741/20200907-MOD_Analysis_and_Response-FINAL.pdf

The limitation period for intentional torts relate to issues such as intentional harm caused by child abuse, as in the case of Stubbings[5], or assault or false imprisonment, as acknowledged by the Ministry of Defence in the consultation response. Civil claims which will be caught by Part two of the Bill relate to harm caused by negligence, and which by definition is not intentional harm and involves very different legal considerations. The decision in Stubbings did not seek to limit the rights of claimants to bring claims in negligence where section 33 of the Limitation Act (which allows personal injury claims to proceed out of time) would otherwise apply.

The Government appears to be taking advantage of the fact that it is unique in its ability to legislate to restrict legal claims made against it; without any evidence or real explanation, without an impact assessment published alongside the Bill, and under the guise of benefiting service personnel and veterans, it is saving money from legal claims at the expense of injured veterans.

Barrier to justice and accountability

The rate of injury and ill health reported for the UK Armed Forces has, according to the MoD's own statistics, increased since 2014/2015[6]. There were 21,009 reported health and safety incidents in 2018/19. Not all of these incidents resulted in personal injury claims, of course, but when they did, they sometimes helped to highlight and rectify failure in training or equipment. Personal injury claims are important not only in securing justice for injured people or bereaved families, but also in holding the MoD to account where its negligence has resulted in a needless injury, or worse. The unsuitability of Snatch Land Rovers during the conflicts in Iraq and Afghanistan, and Pinzgauer vehicles in Afghanistan for example, would never have come to light had it not been for bereaved families pursuing legal action against the MoD. It is clear that to fetter the ability of people to bring claims against the MoD will reduce protection for service personnel.

[5] https://www.independent.co.uk/news/people/civil-claims-over-sex-abuse-were-time-barred-1359893.html

[6] MOD Health and Safety Statistics: Annual Summary & Trends Over Time 2014/15 – 2018/19 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/845843/Enclosure_1_MOD_Health_and_Safety_Statistics_Annual_Report_2018-19.pdf

In an attempt to defend the proposals, defence minister Johnny Mercer has told MPs that "it is simply wrong to assert that the Bill prevents service personnel, veterans or their relatives from bringing claims, because it does not change how the time limit is calculated"[7]. The fact the Bill does not change how the time limit is calculated is not in dispute. Previously, the Government has also said the proposals "should ensure that claims are brought promptly…"[8], but it is not always that simple. The Bill fails to take into account the many reasons why a personal injury claim isn't always made promptly, especially by service personnel.

Concerns have been raised by our specialist members that injured personnel can be misinformed about their right to make a legal claim. Some personnel are told that they are unable to pursue a claim while still serving, or are told by those higher up the chain of command that they don't have a valid claim. The culture of the armed forces is such that, if people are told they can't make a claim, it is unlikely that this will be questioned. It is only when people leave the service that they discover they could have been entitled to make a claim after all. This could then be too late if this Bill becomes law.

It could take a high-profile event many years later, such as a public inquiry, for someone to decide to make a claim. Earlier this year one of our members settled a claim with the Ministry of Defence on behalf of a widow and her two children. In 2005 her husband, then serving as a corporal in the British Army, was killed in Iraq while travelling in a Snatch Land Rover. It was only after the release of the Chilcot Report in July 2016 that she appreciated the failings of the Ministry of Defence, and decided to make a claim for loss of dependency, and a claim under the Human Rights Act on the basis that her husband had a right to life. The time limit in this Bill would have prevented this claim, and a widow would have been denied justice to which she should be entitled.

[7] House of Commons urgent question, 16 July 2020 https://bit.ly/2RrmlYj
[8] Legal Protections for Armed Forces Personnel and Veterans serving in operations outside the United Kingdom, page 18
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819101/20190718-MOD_consultation_document-FINAL.pdf

Increased legal costs and less compensation

This Bill could have the unintended consequence of increasing legal costs while also denying injured service personnel and veterans their much-needed compensation. Deafness claims, for example, could become more complex and expensive to pursue.

The Bill is limited in scope to claims which relate to overseas operations. Negligent exposure to noise while serving in the armed forces, which could result in a deafness claim, can occur over many years and in many different countries, including the UK. Throughout their careers, service personnel could have been negligently exposed to noise during any number of postings or while at home. If this Bill becomes law, and a claim is brought after six years, it will be out of time in terms of aspects of the claim which originated overseas. Technically it should be possible to make a claim for negligent exposure to noise which caused deafness provided it happened in the UK, but actually proving where in the world the negligent exposure occurred will be very difficult, and therefore costly.

An example of where this difficulty would have arisen is in the case brought by one our members. Last year, Alastair Inglis received £545,766 for a noise-induced hearing claim on the grounds that his hearing loss and tinnitus was caused by a negligent exposure to noise whilst serving in the Royal Marines[9]. During his career Mr Inglis served in Northern Ireland, the Gulf and in Afghanistan. He also served as a recruit troop instructor, as well as a weapons instructor at the Royal Navy training facility HMS Raleigh in Cornwall. He was exposed to noise from thousands of rounds of ammunition, thunder flash stun grenades, helicopters and other aircraft and explosive devices[10]. His claim related to this entire service.

When Mr Inglis left the Royal Marines in 2012 because of problems with his hearing, he was unaware he was able to make a claim for compensation[11]. Mr Inglis eventually spoke to one of our members in late 2014, seven years after he was first aware that he had problems with his hearing. The MoD admitted liability, and made no argument about his case being brought out of time. The time limit in this Bill, however, would have eliminated all the aspects of the claim relating to Mr Inglis' extensive service overseas. The claim could only have been made in relation to negligent exposure in the UK. It may not have been possible to isolate the extent and effect of the negligent exposure in the UK, making it very difficult to claim any redress at all.

[9] https://metro.co.uk/2019/05/09/ex-royal-marine-wins-500000-explosions-battle-destroyed-hearing-9459427/
[10] Paragraph 10 https://www.bailii.org/ew/cases/EWHC/QB/2019/1153.html
[11] Paragraph 45 https://www.bailii.org/ew/cases/EWHC/QB/2019/1153.html

Lack of Humans Rights protection

Clause 12 places a duty on future governments to consider derogation from the European Convention on Human Rights (ECHR) in relation to overseas operations. Armed forces personnel sent overseas could therefore find themselves without the protection of the Human Rights Act, which is taken for granted by all other UK citizens. This goes against everything the UK stands for as one of the most progressive and developed democracies in the modern world. It is also contrary to the Armed Forces Covenant, which is "a promise by the nation ensuring that those who serve or who have served in the armed forces, and their families, are treated fairly"[12]. The removal of their human rights protection is not treating service personnel fairly, and they will have fewer rights when defending this nation abroad than someone in prison.

Since 1953 the ECHR has guaranteed the rights and freedoms of people across Europe. The UK was instrumental in its establishment, and was one of the first countries to sign and ratify the Convention. It was proposed originally by Sir Winston Churchill, and drafted mainly by British lawyers[13]. Our history with the ECHR shows the UK's commitment to the importance of human rights. That commitment is now under threat by clause 12 of this Bill.

Derogation is permitted under Article 15 of the ECHR, but the European Court on Human Rights says it should only ever happen in "exceptional circumstances"[14]. Even then we should be cautious about any attempts to move away from what is an accepted international standard for human rights. To place a duty on future governments to consider derogation risks normalising a decision to derogate. It makes it appear for derogation to be perfectly acceptable, and something which should happen as standard whenever UK armed forces are engaged in overseas operations. It does nothing but undermine our commitment to human rights, and the protection which the UK was so integral in establishing.

[12] https://www.armedforcescovenant.gov.uk/
[13] https://www.equalityhumanrights.com/en/what-european-convention-human-rights
[14] Guide on Article 15 of the European Convention on Human Rights, European Court of Human Rights, page 5 https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,500 members who are committed to supporting the association's aims. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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